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NUMBER 86-1607

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1986

ALTON J. BAILEY, *Petitioner*

versus

RYAN STEVEDORING COMPANY, INC., ET AL., *Respondents*

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Was the court of appeals correct in holding that the plaintiff was not a "prevailing party" as to the stevedoring companies within the meaning of Section 706 (k) of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-5 (k), and accordingly dismissing the plaintiff's claims against them for attorney's fees?

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ALTON J. BAILEY, *Petitioner*

versus

RYAN STEVEDORING COMPANY, INC.;
ROGERS TERMINAL AND SHIPPING CORPORATION;
LOUISIANA STEVEDORES, INC.;
RAMSAY, SCARLETT AND COMPANY, INC.;
BATON ROUGE MARINE CONTRACTORS, INC.;
AND LOCAL 1830 AND LOCAL 1833,
GENERAL LONGSHORE WORKERS,
INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Respondents

BRIEF OF ROGERS TERMINAL AND SHIPPING CORPORATION, LOUISIANA STEVEDORES, INC., RAMSAY, SCARLETT AND COMPANY, INC. AND BATON ROUGE MARINE CONTRACTORS, INC.

STATEMENT OF THE CASE

The plaintiffs complaint alleged a violation of Title VII of the Civil Rights Act of 1964 by two local unions of the ILA and

five stevedoring companies. The action was originally brought as a class action. The plaintiff also asserted individual claims.

The district court denied class action treatment. It also dismissed the plaintiff's individual claims against the stevedoring companies after trial. The district court's decision in those two respects was affirmed by the court of appeals on March 11, 1976. *Bailey v. Ryan Stevedoring Co., Inc.*, 528 F.2d 551 (5th Cir. 1976). The Supreme Court denied certiorari on January 10, 1977. *Local 1830, ILA v. Bailey*, 429 U.S. 1052 (1977). The case against the stevedoring companies was essentially over at that point.

The court of appeals' decision also directed the district court to issue a permanent injunction against the continued operation of segregated local unions. The remainder of the litigation related to the consolidation of the local unions.

On June 14, 1983, the plaintiff filed a motion for attorney's fees. On June 27, 1983, the four stevedoring companies on whose behalf this brief is filed moved to dismiss the attorney's fees claim against them. The district court granted the motion on July 19, 1984, for reasons to be assigned at the conclusion of the case. On July 8, 1986, the district court assigned its reasons. See Petition for Writ of Certiorari, appendix I.

The court of appeals affirmed.

SUMMARY OF ARGUMENT

The courts below correctly denied the plaintiff's claim for attorney's fees against the stevedoring companies on the ground that the plaintiff was not a "prevailing party" as to those defendants. No relief whatsoever was granted against the stevedoring companies. The only relief granted was an order prohibiting the continued operation of the segregated local

unions. The plaintiff lost his individual claim of discrimination and his attempt to maintain a class action. The plaintiff was not a "prevailing party" as to the stevedoring companies and is therefore not entitled to recover his attorney's fees from them.

As to the claims against the stevedoring companies, therefore, the case presents neither a conflict with the decision of another court of appeals nor an important question of federal law that has not yet been settled by this Court.

The union's position will be discussed in the union's brief.

ARGUMENT

The relevant statutory provision is Section 706(k) of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-5(k), which reads as follows:

> In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

In its July 8, 1986, opinion the district court explained its reasons for dismissing the attorneys' fees claim against the stevedoring companies:

> Named as defendants in the original suit were the unions and several stevedoring companies. This court previously found that the stevedoring companies were not liable for attorney's fees since they had nothing to do with the operation of the unions and had no voice in determining whether there should be a merger of the unions. Furthermore, these companies were not guilty of any discrimination against the plaintiff or the union. Thus, these companies cannot be required to pay attorney's fees

to the plaintiff whether plaintiff is a prevailing party or not.

The court of appeals affirmed.

The plaintiff lost his case against the stevedoring companies. Class action treatment was denied, and his individual claims against the stevedoring companies were dismissed. He obtained no relief of any kind against the stevedoring companies. The only relief that was granted was an order merging the local unions. The stevedoring companies, of course, had nothing to do with the organizational structure of the unions. The order requiring merger of the local unions did not constitute a finding of a violation of Title VII on the part of the stevedoring companies, nor the grant of any relief against the stevedoring companies. The plaintiff was simply not a "prevailing party" as to the stevedoring companies.

The courts below also held that the plaintiff was not a prevailing party as to the unions. Whatever the outcome of that issue, it has no bearing on the stevedoring companies. Attorneys' fees cannot be imposed on a prevailing defendant even if relief is granted against another defendant.

CONCLUSION

The petition for a writ of certiorari with respect to the claims against the stevedoring companies should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been mailed, postage pre-paid, to:

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